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MONTANA LEGISLATIVE HISTORY

Chapter 255 19 95

Bill H 65 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)		C	Hearing Date(s)	3-15	✓ C
	2-7	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

	RETURNED TO HOUSE WITH AMENDMENTS		
3/07	2ND READING AMENDMENTS CONCURRED	95	4
3/08	3RD READING AMENDMENTS CONCURRED	96	3
3/11	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 175		
	EFFECTIVE DATE: 07/01/95		

HB 64 INTRODUCED BY EWER

REVISE QUALIFICATIONS FOR POLICE OFFICERS

12/29	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
2/06	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	87	6
2/10	3RD READING PASSED	96	4
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	43	0
3/11	3RD READING CONCURRED	39	0
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/14	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 150		
	EFFECTIVE DATE: 03/16/95		

HB 65 INTRODUCED BY MCKEE

GENERALLY REVISE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

12/29	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/06	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/11	REVISED FISCAL NOTE RECEIVED		
1/12	REVISED FISCAL NOTE PRINTED		
1/27	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	REREFERRED TO APPROPRIATIONS		
2/14	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED	97	3
2/17	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/15	HEARING		

3/15	REVISED FISCAL NOTE REQUESTED		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/17	REVISED FISCAL NOTE RECEIVED		
3/17	REVISED FISCAL NOTE PRINTED		
3/18	2ND READING CONCURRED	46	0
3/20	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 255		
	EFFECTIVE DATE: 03/28/95		

HB 66 INTRODUCED BY WISEMAN

IMPLEMENT RECOMMENDATION OF GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY TRANSFERRING LICENSING OF CONSTRUCTION BLASTERS, BOILER AND STEAM ENGINE OPERATORS, AND CRANE AND HOIST OPERATORS TO DEPARTMENT OF COMMERCE FROM DEPARTMENT OF LABOR AND INDUSTRY

12/29	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO BUSINESS & LABOR		
1/04	HEARING		
1/09	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED AS AMENDED	90	9
1/25	3RD READING PASSED	88	10
	TRANSMITTED TO SENATE		
1/26	FIRST READING		
1/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/28	HEARING		
3/15	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 67 INTRODUCED BY R. JOHNSON

REVISE RATE OF INTEREST PAID ON REGISTERED WARRANTS

BY REQUEST OF THE DEPARTMENT OF COMMERCE

12/29	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO TAXATION		
1/04	HEARING		
1/05	FISCAL NOTE RECEIVED		
1/05	FISCAL NOTE PRINTED		
1/10	COMMITTEE REPORT—BILL PASSED		
1/11	2ND READING PASSED	100	0
1/12	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
1/13	FIRST READING		
1/13	REFERRED TO FINANCE & CLAIMS		
1/24	HEARING		
1/31	COMMITTEE REPORT—BILL CONCURRED		
2/01	2ND READING CONCURRED	50	0
2/02	3RD READING CONCURRED	47	1

HOUSE BILL NO. 65

INTRODUCED BY MCKEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED; DISCONTINUING THE FUNCTION OF THE EASTMONT HUMAN SERVICES CENTER AT GLENDIVE AS A RESIDENTIAL FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES; SETTING QUALIFICATIONS FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS 53-1-202, 53-1-402, 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-146, 53-20-161, AND 53-20-501, MCA; REPEALING SECTIONS 53-20-105, 53-20-111, AND 53-20-502, MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. Department of corrections and human services. (1) The following components are included in the department of corrections and human services to carry out the purposes of the department:

(a) adult corrections services consisting of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(i) Montana state prison;

(ii) the Montana women's correctional center; and

(iii) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) mental health services consisting of the following institutional components for c. treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) Montana state hospital;

(ii) Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and tre of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, in outpatient, outpatient, prevention, education, and other necessary chemical dependency services pu to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for ~~developmentally disabled~~ persons with developmental disabilities who require that care according t 53, chapter 20, consisting of:

~~(i)~~ the Montana developmental center~~; and~~

~~(ii) Eastmont human services center~~; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably disch veterans as provided by law, consisting of:

(i) Montana veterans' home; and

(ii) eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent legislature."

Section 2. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. (1) The department shall as and collect per diem and ancillary charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home; and

(e) Montana center for the aged~~;~~

~~(f) Eastmont human services center~~.

(2) This section does not apply to the eastern Montana veterans' home if the department contracts with a private vendor to operate the facility as provided for in 10-2-416."

Section 3. Section 53-20-102, MCA, is amended to read:

"53-20-102. ~~(Temporary)~~ **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~ facilities and ~~facilities which~~ services that are available for the evaluation, treatment, and habilitation of ~~the developmentally disabled~~ persons with developmental disabilities in a community setting~~, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities~~.

(3) "Court" means a district court of the state of Montana.

(4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services and the department of corrections and human services.

(5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and ~~requiring~~ that requires treatment similar to that required by mentally retarded individuals. ~~If the~~ A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a substantial handicap of ~~such~~ the individual.

~~(5)~~(6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~ that enable ~~him~~ the person to cope more effectively with personal needs and the demands of ~~his own person and~~ the environment and ~~to raise~~ in raising the level of ~~his~~ the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a ~~person committed to~~ resident ~~a residential facility~~. The ~~committed person~~ resident is a member of the team.

~~(7)~~(8) "Next of kin" includes but ~~need~~ is not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

(9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a~~ professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of evaluation, treatment, or habilitation~~.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, who are responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) ~~is developmentally disabled~~ has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995--sec. 27, Ch. 381, L. 1991.)~~

~~**53-20-102. (Effective October 1, 1995) Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.~~

~~(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.~~

~~(3) "Court" means a district court of the state of Montana.~~

~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.~~

~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.~~

~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.~~

~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult~~

~~brothers and sisters of a person.~~

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.~~

~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.~~

~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.~~

~~(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.~~

~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.~~

~~(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.~~

~~(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."~~

Section 4. Section 53-20-102, MCA, is amended to read:

"**53-20-102.** ~~(Temporary)~~ **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~ facilities and ~~facilities which~~ services that are available for the evaluation, treatment, and habilitation of ~~the developmentally disabled~~ persons with developmental disabilities in a community setting~~, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community based services and facilities~~.

(3) "Court" means a district court of the state of Montana.

(4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services and the department of corrections and human services.

(5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and ~~requiring~~ that requires treatment similar to that required by mentally retarded individuals. ~~if the~~ A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a substantial handicap of ~~such~~ the individual.

~~(5)~~(6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~ that enable ~~him~~ the person to cope more effectively with personal needs and the demands of ~~his own person and~~ the environment and ~~to raise~~ in raising the level of ~~his~~ the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a ~~person committed to~~ resident ~~a residential facility~~. The ~~committed person~~ resident is a member of the team.

~~(7)~~(8) "Next of kin" includes but ~~need~~ is not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

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(9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a~~ professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of evaluation, treatment, or habilitation~~.

(11) "Residential facility" or "facility" means the Montana developmental center ~~and the Eastmont human services center~~.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, who are responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) ~~is developmentally disabled~~ has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995--sec. 27, Ch. 381, L. 1991.)~~

~~**53-20-102. (Effective October 1, 1995) Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.~~

~~(2) "Community based facilities" or "community based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community based services and facilities.~~

~~(3) "Court" means a district court of the state of Montana.~~

~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.~~

~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.~~

~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.~~

~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.~~

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.~~

~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.~~

~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.~~

~~(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.~~

~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.~~

~~(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.~~

~~(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community based setting and which has resulted in self inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.~~"

Section 5. Section 53-20-102, MCA, is amended to read:

"**53-20-102.** ~~**(Temporary)**~~ **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors

created by 2-15-211.

(2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~ facilities and ~~facilities which~~ services that are available for the evaluation, treatment, and habilitation of ~~the developmentally disabled~~ persons with developmental disabilities in a community setting~~, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities~~.

(3) "Court" means a district court of the state of Montana.

(4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

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(5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and ~~requiring~~ that requires treatment similar to that required by mentally retarded individuals. ~~If the~~ A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a substantial handicap of ~~such~~ the individual.

~~(5)~~(6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~ that enable ~~him~~ the person to cope more effectively with personal needs and the demands of ~~his own person and~~ the environment and ~~to raise~~ in raising the level of ~~his~~ the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a ~~person committed to~~ resident ~~a residential facility~~. The ~~committed person~~ resident is a member of the team.

~~(7)~~(8) "Next of kin" includes but ~~need~~ is not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~

~~a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.~~

(9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a~~ professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of evaluation, treatment, or habilitation~~.

(11) "Residential facility" or "facility" means the Montana developmental center ~~and the Eastmont human services center~~.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, who are responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) ~~is developmentally disabled~~ has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care ~~or near total care~~ and who because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995--sec.~~

~~27, Ch. 381, L. 1991.)~~

~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions apply:~~

~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.~~

~~(2) "Community based facilities" or "community based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community based services and facilities.~~

~~(3) "Court" means a district court of the state of Montana.~~

~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.~~

~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.~~

~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.~~

~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.~~

~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:~~

~~(a) has training and experience in psychometric testing and evaluation;~~

~~(b) has experience in the field of developmental disabilities; and~~

~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~

~~and the department of corrections and human services.~~

~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:~~

~~(a) a licensed physician or osteopath;~~

~~(b) a registered nurse; or~~

~~(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.~~

~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.~~

~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.~~

~~(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.~~

~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.~~

~~(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.~~

~~(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."~~

Section 6. Section 53-20-104, MCA, is amended to read:

"53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review established to ensure that the treatment of all persons ~~admitted~~ committed to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons ~~admitted~~ committed to a residential facility to ensure that the research project is humane

and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons ~~admitted~~ committed to a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person ~~admitted~~ committed to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving ~~any~~ a grievance the resident may have concerning the resident's ~~admission~~ commitment or course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of ~~any~~ a resident, it shall report its findings at once to the superintendent of the facility and the director of the department of corrections and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected."

Section 7. Section 53-20-106, MCA, is amended to read:

"**53-20-106. Certification of ~~professional persons~~ developmental disabilities professionals.** (1) ~~The~~ A developmental disabilities professional must be certified by the department of social and rehabilitation

services and the department of corrections and human services ~~shall certify professional persons for purposes of this part~~.

(2) The department of social and rehabilitation services and the department of corrections and human services shall adopt rules governing the certification of ~~professional persons~~ developmental disabilities professionals. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities."

Section 8. Section 53-20-107, MCA, is amended to read:

"**53-20-107. Department to compile list of qualified ~~visitors~~ developmental disabilities professionals.** The department of corrections and human services shall compile and provide to each district court within the state a list of ~~professional persons within the region where the district court is located~~ developmental disabilities professionals who possess competencies in the evaluation and habilitation of persons with developmental disabilities ~~and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses~~."

Section 9. Section 53-20-112, MCA, is amended to read:

"**53-20-112. Procedural rights.** (1) A ~~person subject to emergency admittance to a residential facility or to any hearing held pursuant to this part~~ respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a ~~person alleged to be seriously developmentally disabled and in need of developmental disabilities services~~ respondent have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional ~~person~~ of their choice when ~~such~~ professional ~~person~~ is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court."

Section 10. Section 53-20-113, MCA, is amended to read:

"**53-20-113. Waiver of rights.** (1) A ~~person~~ respondent may waive ~~his~~ the respondent's procedural rights provided that the waiver is knowingly and intentionally made.

(2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

(3) The right to habilitation provided for in this part may not be waived.

~~(2)~~(4) A ~~person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation~~ respondent may knowingly and intentionally waive ~~his~~ the respondent's rights only with the concurrence of the ~~person's~~ respondent's counsel, if any, or, if ~~he~~ the respondent has no counsel, ~~his~~ the respondent's parents, guardian, or other responsible person appointed by the court.

~~(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:~~

~~(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;~~

~~(ii) when the minor is over the age of 12, by the minor and his parents;~~

~~(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor may make an effective waiver of his rights only with the advice of counsel.~~

~~(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.~~"

Section 11. Section 53-20-114, MCA, is amended to read:

"**53-20-114. Appointment of responsible person.** ~~Whenever, in any~~ (1) In a proceeding under this part, the court ~~believes~~ shall appoint a responsible person to protect the interests of the respondent if the court determines:

(a) that a conflict of interest may exist between ~~a person who is developmentally disabled or alleged to be developmentally disabled and his~~ the respondent and the respondent's parents or guardian; ~~or~~

(b) that the parents or guardian are unable to protect the interests of ~~such person~~ the respondent; or

(c) ~~whenever there is~~ that the respondent has no parent or guardian~~, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled~~.

(2) The responsible person may not be an employee of a residential facility.

(3) Only one person ~~shall at any one time~~ may be the responsible person within the meaning of this part.

(4) In appointing a responsible person, the court shall consider the preference of the respondent ~~or patient~~. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(5) The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. ~~However, the~~ The appointment of the responsible person ~~shall~~ may not terminate during any period of conditional release from the facility."

Section 12. Section 53-20-116, MCA, is amended to read:

"**53-20-116. ~~Professional person to attend~~ Residential facility screening team member -- testimony at hearing.** In ~~any~~ a hearing held pursuant to this part, a member of the residential facility screening team ~~or the professional person who evaluated the person must be present at the hearing and subject to cross-examination~~ may be required to testify with regard to a determination made by the residential facility screening team."

Section 13. Section 53-20-118, MCA, is amended to read:

"**53-20-118. Venue for hearing.** (1) Hearings held pursuant to this part ~~shall~~ must be held in the district court for the district ~~where~~ in which the respondent resides~~, except that at the request of any party or the professional person, who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential facility or is undergoing community-based evaluation, treatment, or habilitation.~~ or in which the residential facility is located to which the respondent is or is to be committed.

(2) The cost of any hearing held pursuant to this part ~~shall~~ must be borne by the county where the respondent resides."

Section 14. Section 53-20-121, MCA, is amended to read:

"**53-20-121. Petition for involuntary treatment -- contents of.** (1) ~~Any~~ A person who believes that there is a person who is seriously developmentally disabled and in need of ~~placement in~~ commitment to a

residential facility may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of ~~placement in~~ commitment to a residential facility.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and ~~their~~ the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; and

(f) a statement of the rights of the respondent and ~~his~~ the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) A copy of the petition must be sent to the residential facility screening team."

Section 15. Section 53-20-125, MCA, is amended to read:

"**53-20-125. Outcome of screening -- recommendation for ~~treatment at~~ commitment to residential facility -- hearing.** (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the ~~person~~ respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation ~~in a residential facility~~ on an extended basis, the team shall file its written recommendation and report with the court ~~and request that the court order the admission~~. The report ~~shall~~ must include the factual basis for the recommendation and ~~shall~~ must describe any tests or evaluation devices that have been employed in evaluating the ~~patient~~ respondent.

~~(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there~~

~~is no parent or guardian, the court shall appoint a responsible person.~~

(3) At the request of the respondent, ~~his~~ the respondent's parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents ~~(or guardian)~~ are indigent and if they request it or if a guardian is indigent and requests it, the court shall appoint counsel for the parents or guardian.

(4) Notice of the ~~recommendation~~ determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent~~, his~~;

(b) the respondent's parents ~~or~~, guardian~~,~~ or next of kin, if known;

(c) the responsible person~~, next of kin, if known,~~;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility; ~~and~~

(g) the attorney for the respondent, if any~~,~~; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, ~~his~~ the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. ~~If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing~~

(6) Notice of the hearing must be mailed or delivered to each of the parties listed ~~at the beginning of this~~ in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure ~~must~~ apply.

~~(6)~~(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent ~~admitted~~ committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent ~~is developmentally disabled~~ has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent ~~is not developmentally disabled~~ does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

~~(7)~~(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order ~~authorizing the person to be admitted~~ for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize ~~admission~~ commitment of a ~~person~~ respondent to a residential facility for an extended period of treatment and habilitation if ~~admission~~ commitment is not in the best interests of the ~~person~~ respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 16. Section 53-20-126, MCA, is amended to read:

"**53-20-126. Maximum period of ~~admission~~ commitment to residential facility.** ~~(1) No person shall be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a person is admitted to a residential facility for longer than 30 days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.~~

~~(2)~~ The court order approving the ~~admission~~ commitment ~~shall~~ must specify the maximum period of time for which the person is ~~admitted~~ committed to the residential facility. ~~In no case shall~~ ~~this~~ The maximum period may not exceed 1 year."

Section 17. Section 53-20-127, MCA, is amended to read:

"**53-20-127. Transfer to another ~~residential~~ facility -- release to community-based alternative -- hearing.** (1) If, at any time during the period for which a ~~person~~ resident is ~~admitted~~ committed to a residential facility for an extended period of habilitation and treatment, the qualified mental retardation professional ~~in charge of~~ responsible for the ~~resident~~ resident's habilitation decides that the ~~person~~ resident no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others ~~or that it is in the best interests of the resident that he be transferred to another residential facility~~, ~~then he~~ the qualified mental retardation professional may

release the resident to the community-based alternative ~~or transfer the resident to the other residential facility no less than 15 days after sending~~.

(2) ~~notice~~ Notice of the proposed release ~~or transfer~~ must be sent at least 15 days prior to the date of release to:

(a) the resident~~, his~~;

(b) the resident's parents or guardian~~,~~;

(c) the attorney who most recently represented the resident, if any~~,~~;

(d) the responsible person appointed by the court, if any~~, and~~;

(e) the resident's advocate, if any; and

(f) the court that ordered the ~~admission~~ commitment. ~~If the resident has been found unfit to proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial.~~

~~(a)~~(3) If ~~any of the parties so~~ a party that was notified objects to the release ~~or transfer~~, ~~they~~ the party may petition the court for a hearing to determine whether the release ~~or transfer~~ should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release ~~or transfer~~.

~~(b)~~(4) ~~Nothing in this subsection (1) prevents the transfer of a~~ A resident may be transferred without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical treatment or ~~emergency transfer of a resident~~ to a mental health facility for emergency treatment provided that the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

~~(2)~~(5) If a person is ~~admitted~~ committed to a residential facility for an extended course of habilitation without a hearing and if subsequent to ~~admission~~ commitment one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified mental retardation professional ~~in charge of~~ responsible for the ~~resident~~ resident's habilitation to release the resident to the alternative if it is a community-based alternative ~~or transfer the resident to the alternative if it is a residential alternative~~. ~~Any transfer or~~ A release must comply with the requirements of ~~subsection~~ subsections (1) through (4). If the

qualified mental retardation professional in charge of the resident refuses to authorize the release ~~or transfer~~, ~~then~~ the party may petition the court for a hearing to determine whether the ~~present residential alternative~~ resident's commitment should be continued. The hearing must comply with the procedures set forth in 53-20-125."

Section 18. Section 53-20-128, MCA, is amended to read:

"**53-20-128. ~~Extension of admission period -- hearing~~ Recommitment.** (1) If the qualified mental retardation professional ~~in charge of the resident~~ responsible for a resident's habilitation determines that the ~~admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court that issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request must be accompanied by a written report describing the habilitation plan that has been undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.~~ resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall request that a petition for recommitment be filed.

(2) A petition for recommitment must be filed with the district court before the end of the current period of commitment.

(3) The recommendation of the qualified mental retardation professional must be presented in a written report that includes a summary of the current habilitation plan for the resident.

(4) The resident must be screened in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional must be sent to:

(a) the court that issued the current order;

(b) the residential screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of the resident to hold a hearing.

~~(2)~~(7) If ~~any person so notified requests~~ the court sets a hearing, the court shall ~~set a time and place for the hearing and shall mail or deliver~~ provide notice to all of the persons ~~informed of the recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility.~~ notified pursuant to subsection (5).

(8) A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require ~~treatment in~~ commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the ~~respondent~~ resident to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the ~~person~~ resident is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. ~~The~~

(9) The court may not order ~~continuation of admission~~ recommitment to a residential facility that does not have an individualized habilitation plan for the resident. ~~In its order, the court shall make findings of fact on which its order is based.~~

(10) At a hearing, the ~~The~~ court may ~~on its own initiative~~ inquire concerning the suitability of continuing ~~an admission~~ a resident's commitment to a residential facility."

Section 19. Section 53-20-129, MCA, is amended to read:

"**53-20-129. Emergency admission and commitment.** (1) A ~~professional person may admit a~~ person believed to be seriously developmentally disabled ~~to~~ may be admitted in a residential facility on an

emergency basis when necessary to protect the person or others from death or serious bodily harm.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission may not proceed unless the residential facility and the department of social and rehabilitation services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition ~~as set out in 53-20-121 and 53-20-125~~ for emergency commitment must be filed on the next judicial day after an emergency admission by the county attorney of the county where the person resides. ~~If a petition is filed, the~~

(5) The residential facility screening team shall report back to the court on the ~~fifth~~ seventh judicial day following the filing of the petition for emergency commitment.

(6) Once ~~a petition is filed~~ the report of the residential facility screening team is received by the court, continued ~~detention~~ placement in the residential facility may ~~be allowed only on~~ not continue without an order of the court for emergency commitment.

(7) A court may order an emergency commitment only when the court determines that the emergency commitment is necessary to protect the respondent or others from death or serious bodily harm. ~~In no case may an~~

(8) An order for emergency commitment may be entered without a hearing before the court, if the court finds that the record supports the order.

(9) An emergency ~~admission~~ commitment to a residential facility may not continue for longer than 30 days ~~without subsequent proceedings~~ after placement in the residential facility unless a petition for an extended commitment to the residential facility has been filed before the court.

(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis."

Section 20. Section 53-20-130, MCA, is amended to read:

"53-20-130. Patient transfers from mental health facilities. If ~~any~~ a person is a patient in a mental health facility and the professional person, as defined in 53-21-102, in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be ~~admitted~~ committed to a residential facility or an appropriate less restrictive alternative, ~~then~~ the

professional person shall commence proceedings to effect ~~such admission~~ a commitment, consistent with the procedures set forth in this part for ~~admissions~~ commitments generally."

Section 21. Section 53-20-133, MCA, is amended to read:

"**53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When the district court ~~considers a person~~ receives a petition for commitment to a residential facility under this part, the court, prior to proceeding, shall refer the ~~person~~ respondent to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the ~~person~~ respondent.

(2) A court may not commit a ~~person~~ respondent to a residential facility under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the ~~person~~ respondent.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate on an extended basis unless the residential facility screening team determines that the ~~person~~ respondent is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of social and rehabilitation services and the department of corrections and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 22. Section 53-20-146, MCA, is amended to read:

"**53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility have a right not to be subjected to ~~any~~ unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. ~~Such proposed~~ Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury ~~to himself~~ or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional ~~person~~, or a qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the ~~person~~ resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be ~~utilized~~ used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. ~~Such~~ These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified mental retardation professional who has had proper training ~~in such techniques~~.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when ~~such~~ the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. ~~Such~~ Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of ~~such~~ electric shock devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility."

Section 23. Section 53-20-161, MCA, is amended to read:

"**53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if ~~he~~ the resident is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or ~~his~~ the superintendent's designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, ~~his~~ the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident's advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of

information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to ~~these subsections~~ subsection (1)(f), (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information ~~shall~~ must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an appropriate summary ~~that will~~ to guide and assist the resident care workers in implementing the resident's ~~program~~ habilitation plan;

(g) the findings made in monthly reviews of the habilitation plan, ~~which findings must include~~ including an analysis of the successes and failures of the habilitation program and ~~direct~~ whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications ~~thereto~~ to the postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a qualified mental retardation professional ~~person~~ with a resident;

(k) a summary of the resident's response to ~~his~~ the resident's habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, ~~such~~ the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional~~, professional person,~~ or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures~~,~~; illnesses~~,~~; injuries; ~~and~~ treatments ~~thereof~~ of seizures, illnesses, and injuries; and immunizations."

Section 24. Section 53-20-501, MCA, is amended to read:

"**53-20-501. Primary function of Montana developmental center ~~and Eastmont human services center~~.** The primary functions of the Montana developmental center ~~and the Eastmont human services center~~ are the care, treatment, training, education, and necessary medical treatment of ~~mentally retarded~~ persons who have been determined to be seriously developmentally disabled."

NEW SECTION. **Section 25. Repealer.** Sections 53-20-105, 53-20-111, 53-20-502, MCA, and Section 27, Chapter 381, Laws of 1991, are repealed.

NEW SECTION. **Section 26. Phrase change -- directions to code commissioner.** Wherever a reference to a person who is developmentally disabled or to a developmentally disabled person appears in the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is directed to change the reference to a person with developmental disabilities. The phrase "seriously developmentally disabled" should remain.

NEW SECTION. **Section 27. Effective dates.** (1) [Sections 3, 6 through 23, 25, 26, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4, and 24] are effective January 1, 1997.

(3) [Section 5] is effective January 1, 1998.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0065, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill to generally revise the laws governing commitment to residential facilities for people who are developmentally disabled, to discontinue the function of the Eastmont Human Services Center (EHSC) at Glendive, and to set qualifications for a person to be committed to a residential facility.

ASSUMPTIONS:

1. The Executive Budget contains new proposals, which recommend the closure of the Eastmont Human Services Center (EHSC) and expansion of community services to serve developmentally disabled (DD) clients, and which are summarized in assumptions three through 16 below.
2. The Executive Budget **present law base** maintains the operation of EHSC through the end of the 1997 biennium. The present law base contains operating expenses for one new group home (available starting FY95) in FY96 and startup costs and operating for two new group homes in FY97. These would allow community placements to keep the Montana Development Center (MDC) population below 110 clients and EHSC at 50. Medicaid certification for MDC is jeopardized if the population exceeds 110 clients.
3. EHSC would close January 1, 1997, and clients would be moved to community-based services. The Executive Budget reflects six months savings in FY97 under new proposals.
4. Separate **new proposals** are included in the Executive Budget under the Department of Corrections and Human Services (DCHS), the Department of Social and Rehabilitation Services (SRS), and the Department of Family Services (DFS) to reflect the implementation of this bill. This fiscal note primarily details the difference from the present law base as a result of this bill.
5. Services will be provided in several smaller group homes or individualized supported living arrangements rather than in one larger residential facility. A variety of work\day service options will be available. The closure of EHSC will require the movement of approximately 48 clients to community group homes. Eight, 6 person, intensive community group homes would be added in the 1997 biennium to provide for these clients.
6. Group homes will be available in the following schedule: three in August 1996; three in September 1996 and two in October 1996.
7. Start-up costs are $80,000 general fund per group home. There is budgeted in SRS $640,000 general fund in FY96 for eight group homes, including the purchase and equipping of the group homes, and a net $2,458,849 in FY97 comprised of $818,133 general fund and $1,640,716 federal special revenue. The annual cost of group home operation is $342,130 in FY96. Of this amount, $330,130 is funded at the Medicaid match rate and is estimated to increase 3% per year. An additional $12,000 of general fund is used each year for operating each group home.
8. The Medicaid match rate (FMAP) is budgeted as follows: actual FY95 = 29.13% general fund and 70.87% federal special revenue; actual FY96 = 30.26% GF and 69.74% FSR; estimated FY97 = 31.00% GF and 69.00% FSR.
9. There is a Vocational Program expansion new proposal in DCHS, which contains 2.25 FTE and $56,448 in FY96 and $55,624 in FY97 to maintain the program required for Medicaid certification of EHSC.
10. A 3% inflation factor is applied to EHSC budgets for FY97, FY98, and FY99, consistent with inflation in community programs.
11. Included in operating costs for EHSC in FY97 is $2,000 per FTE for an Employee Transition Assistance program for a total of $210,240, including vacation and sick leave payouts. The net reduction of state employees in DCHS would be 52.57 FTE in FY97.
12. There is private revenue shown in the DCHS FY94 base that comes from third-party recovery of costs and is deposited to the general fund, but which would be eliminated for a general fund loss of $106,815 in FY97 and about $212,000 on an annualized basis.

(continued)

Dave Lewis 1-8-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jeanette J. McKee 1/9/95
JEANETTE MCKEE, PRIMARY SPONSOR DATE

13. Federal legislation would require Medicaid to rebase FY96 and FY97 costs at EHSC during shutdown.
14. The cost of DD Case Management is $170 per person per month and is funded at [illegible] Medicaid match rate. These amounts are included in the operating costs outlin in number 7 above.
15. The DFS cost for state Supplemental Security Income program (SSI) will be $94 per month per client funded by general fund and held constant over the years. The amount budgeted in new proposals is $45,872 in FY97. Clients previously served at EHSC will become eligible for SSI when moved to community services.
16. **In summary, these new proposals already contained in the Executive Budget in al three state agencies result in a general fund cost of $630,500 in FY96 and a general fund savings of $774,470 in FY97.**
17. An additional $100,000 general fund cost needs to be budgeted to provide a staf retention incentive program in order to maintain Medicaid certification at EHSC until closure. Loss of Medicaid certification would result in loss of revenue to the general fund of approximately $208,334 per month.

FISCAL IMPACT:

The only fiscal impact from this bill not already reflected in the executive budget is a additional $100,000 general fund cost in FY97 for the retention incentive program discussed in number 17 above. **The total net impact during the 1997 biennium is a $43,97(general fund savings.**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Disposition of the physical property at EHSC could have one or more of the following effects:
   - o Income to the state from the sale of the physical property, based on PAMS valuation, would be $1,988,966.
   - o Income from leasing the physical property at EHSC would be $156,715 (based upon 43,303 sq. ft. at EHSC x $4.90 provided by Dept. of Administration, General Services = $212,185 less $55,470 utilities based upon FYE94 SBAS for EHSC).
   - o Cost to the state of maintaining the physical property if EHSC is neither sold or leased would be $75,470 (utility costs of $55,470 + $20,000 for a contracted custodian).
2. Additional community services would be developed in the 1999 biennium and two intensive group homes serving six persons each would be available in July, 1998.
3. Not including any assumptions regarding the disposition of the EHSC physical property, the **general fund** savings will be as follows:

	FY98 Difference	FY99 Difference
DCHS	(1,098,136)	(1,133,071)
SRS	994,938	1,020,995
DFS	54,144	54,144
Total General Fund Savings	(49,054)	(57,932)

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0065, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise the laws governing commitment to residential facilities for people who are developmentally disabled, to discontinue the function of the Eastmont Human Services Center (EHSC) at Glendive, and to set qualifications for a person to be committed to a residential facility.

ASSUMPTIONS:

1. The Executive Budget contains new proposals, which recommend the closure of the Eastmont Human Services Center (EHSC) and expansion of community services to serve developmentally disabled (DD) clients, and which are summarized in assumptions three through 16 below.
2. The Executive Budget **present law base** maintains the operation of EHSC through the end of the 1997 biennium. The present law base contains operating expenses for one new group home (available starting FY95) in FY96 and startup costs and operating for two new group homes in FY97. These would allow community placements to keep the Montana Development Center (MDC) population below 110 clients and EHSC at 50. Medicaid certification for MDC is jeopardized if the population exceeds 110 clients.
3. EHSC would close January 1, 1997, and clients would be moved to community-based services. The Executive Budget reflects six months savings in FY97 under new proposals.
4. Separate **new proposals** are included in the Executive Budget under the Department of Corrections and Human Services (DCHS), the Department of Social and Rehabilitation Services (SRS), and the Department of Family Services (DFS) to reflect the implementation of this bill. This fiscal note primarily details the difference from the present law base as a result of this bill.
5. Services will be provided in several smaller group homes or individualized supported living arrangements rather than in one larger residential facility. A variety of work\day service options will be available. The closure of EHSC will require the movement of approximately 48 clients to community group homes. Eight, 6 person, intensive community group homes would be added in the 1997 biennium to provide for these clients.
6. Group homes will be available in the following schedule: three in August 1996; three in September 1996 and two in October 1996.
7. Start-up costs are $80,000 general fund per group home. There is budgeted in SRS $640,000 general fund in FY96 for eight group homes, including the purchase and equipping of the group homes, and a net $2,458,849 in FY97 comprised of $818,133 general fund and $1,640,716 federal special revenue. The annual cost of group home operation is $342,130 in FY96. Of this amount, $330,130 is funded at the Medicaid match rate and is estimated to increase 3% per year. An additional $12,000 of general fund is used each year for operating each group home.
8. The Medicaid match rate (FMAP) is budgeted as follows: actual FY95 = 29.13% general fund and 70.87% federal special revenue; actual FY96 = 30.26% GF and 69.74% FSR; estimated FY97 = 31.00% GF and 69.00% FSR.
9. There is a Vocational Program expansion new proposal in DCHS, which contains 2.25 FTE and $56,448 in FY96 and $55,624 in FY97 to maintain the program required for Medicaid certification of EHSC.
10. A 3% inflation factor is applied to EHSC budgets for FY97, FY98, and FY99, consistent with inflation in community programs.
11. Included in operating costs for EHSC in FY97 is $2,000 per FTE for an Employee Transition Assistance program for a total of $210,240, including vacation and sick leave payouts. The net reduction of state employees in DCHS would be 52.57 FTE in FY97.
12. There is private revenue shown in the DCHS FY94 base that comes from third-party recovery of costs and is deposited to the general fund, but which would be eliminated for a general fund loss of $106,815 in FY97 and about $212,000 on an annualized basis.

(continued)

Dave Lewis 1-10-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jeanette S. McKee 1/12/95

JEANETTE MCKEE, PRIMARY SPONSOR DATE

REV.-HB65

13. Federal legislation would require Medicaid to rebase FY96 and FY97 costs at EHSC during shutdown.
14. The cost of DD Case Management is $170 per person per month and is funded at the Medicaid match rate. These amounts are included in the operating costs outlined in number 7 above.
15. The DFS cost for state Supplemental Security Income program (SSI) will be $94 per month per client funded by general fund and held constant over the years. The amount budgeted in new proposals is $45,872 in FY97. Clients previously served at EHSC will become eligible for SSI when moved to community services.
16. **In summary, these new proposals already contained in the Executive Budget in all three state agencies result in a general fund cost of $630,500 in FY96 and $616,720 in FY97.**
17. An additional $100,000 general fund cost needs to be budgeted to provide a staff retention incentive program in order to maintain Medicaid certification at EHSC until closure. Loss of Medicaid certification would result in loss of revenue to the general fund of approximately $208,334 per month.

FISCAL IMPACT:

The only fiscal impact from this bill not already reflected in the executive budget is an additional $100,000 general fund cost in FY97 for the retention incentive program discussed in number 17 above. **The total net impact during the 1997 biennium is a $1,347,220 general fund cost.**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Disposition of the physical property at EHSC could have one or more of the following effects:
   - o Income to the state from the sale of the physical property, based on PAMS valuation, would be $1,988,966.
   - o Income from leasing the physical property at EHSC would be $156,715 (based upon 43,303 sq. ft. at EHSC x $4.90 provided by Dept. of Administration, General Services = $212,185 less $55,470 utilities based upon FYE94 SBAS for EHSC).
   - o Cost to the state of maintaining the physical property if EHSC is neither sold or leased would be $75,470 (utility costs of $55,470 + $20,000 for a contracted custodian).
2. Additional community services would be developed in the 1999 biennium and two intensive group homes serving six persons each would be available in July, 1998.
3. Not including any assumptions regarding the disposition of the EHSC physical property, the general fund savings will be as follows:

	FY98 Difference	FY99 Difference
DCHS	(1,098,136)	(1,133,071)
SRS	994,938	1,020,995
DFS	54,144	54,144
Total General Fund Savings	(49,054)	(57,932)

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0065, third reading

DESCRIPTION OF PROPOSED LEGISLATION: Revising laws related to commitment to residential treatment facilities for persons who are seriously developmentally disabled.

ASSUMPTIONS:

Dept. of Corrections and Human Services (DCHS):

1. All fiscal impact addressed in the original fiscal note pertained to the closure of Eastmont Human Services Center (EHSC) and expansion of community services. Since that portion has been amended out of HB65 there is now no fiscal impact to DCHS.

Dept. of Family Services (DFS):

2. With the continuation of the operation of EHSC there will be no fiscal impact of increased Supplemental Security Income payments in the DFS budget.

Dept. of Social and Rehabilitation Services (SRS):

3. As a result amendments to HB65, there is no fiscal impact to SRS.

FISCAL IMPACT:

Based on the amendments to HB65, there is no fiscal impact.

Dave Lewis 3-17-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jeanette J. McKee

JEANETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0065, as third reading

HB 65-#3

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 15:28
RUN DATE.... 04/08/95

HOUSE JUDICIARY

CHAIRMAN--BOB CLARK
SECRETARY-JOANNE GUNDERSON
NORMAL SCHEDULE => SITE: ROOM 312-1 DAYS: M,T,W,T,F TIME: 8:00 A.M.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0026	WYATT, DIANA 1/02	1/03	REVISE MEDICAL LEGAL PANEL ACT	PASS AS AMENDED 1/12 VOTE: 16-3		1/13
HB0037	ELLINGSON, JON 1/09	1/13	REMOVE STATUTE OF LIMITATIONS EXTENSION FOR INCARCERATED CRIMINALS	DO PASS 1/17 VOTE: 19-0		1/18
HB0041	SMITH, LIZ 1/02	1/03	PROVIDE FOR ADMINISTERING MEDICATION INVOLUNTARILY TO MENTAL HEALTH PATIENT	PASS AS AMENDED 2/11 VOTE: 19-0		2/15
HB0046	SIMON, BRUCE 1/02	1/03	EXPAND SCOPE OF CRIME OF ARSON Tabled 1/10 19-0 Reconsider 1/24 16-2	PASS AS AMENDED 1/24 VOTE: 15-4		1/25
HB0055	BOHLINGER, JOHN 1/02	1/13	CONFORM CHILD SUPPORT INCOME DEDUCTION ACT TO FEDERAL REGULATIONS Tabled 2/1 11-7 Reconsider 2/8	Postpone Action 2/8 PASS AS AMENDED 2/9 VOTE: 15-4		2/10
HB0060	KASTEN, BETTY LOU 1/02	1/10	LIMIT INVOLUNTARY COMMITMENT PROCEDURE TO PERSONS 18 OR OLDER	TABLED ON 02/11 VOTE: 14-0		
HB0064	EWER, DAVID 1/02	2/06	REQUIRE AGE AS BONA FIDE QUALIFICATION FOR POLICE OFFICER POSITION	PASS AS AMENDED 2/6 VOTE: 17-0		2/08
HB0065	MCKEE, JEANETTE 1/02	2/7	REVISE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR DEV. DISABLED	PASS AS AMENDED 2/7 VOTE: 10-8	APPROPRIATIONS	2/08
HB0069	FISHER, MARJORIE 1/02	1/18	REVISE CRIME VICTIMS' LAWS	PASS AS AMENDED 1/19 VOTE: 19-0		1/24
HB0070	CLARK, ROBERT 1/02		PROHIBIT WEAPON POSSESSION BY FELON; CONST AMENDMENT NO ACTION TAKEN IN COMMITTEE	TABLED ON 02/17 VOTE:		
HB0071	DEBRUYCKER, ROGER 1/02	1/05	PORTION OF CIVIL PUNITIVE DAMAGE AWARDS PAYABLE TO THE STATE FOR EDUCATION	TABLED ON 01/11 VOTE: 10-8		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 7, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 90, HB 258, HB 323, HB 332
Executive Action: HB 65 DO PASS AS AMENDED

{Tape: 1; Side: A; Comments: Side A of this tape is recorded on 4.8 speed.}

HEARING

EXECUTIVE ACTION ON HB 65

Motion: **REP. DUANE GRIMES MOVED HB 65 DO PASS.**

Discussion: **REP. DANIEL MC GEE** said he could not discern the fiscal logic in closing the facility. He could not determine why a $10 million, 110-bed facility would be built at Boulder to replace a 185-person bed facility. He had visited the community-based home and found they were getting excellent care. He felt the committee was not being told the whole story.

REP. LOREN SOFT described his experience in a similar program for over 30 years and he believed the process for weighing the various aspects and options presented were analogous to this proposal. Then he reviewed the history behind this bill and the decision-making process. He outlined the difficulty of the committee in making a determination based on limited time and information. He felt that they should not be bringing the decision to the legislature but rather should be using the process he outlined in his experience where the people involved weigh, discuss and decide based on their experience and more extensive information to arrive at what is best for the people being served in the facility.

REP. JOAN HURDLE spoke from the perspective of a special educator and cautioned against saying there was only one proper way to serve people. She agreed with **REP. SOFT** that it was strange that there was such a demand to close the facility at all. She wondered why those people are in the care of the Department of Corrections and Human Services (DCHS). She felt that the emphasis should be on examining all the human service-type departments in reorganization rather than on education. She could not support closing Eastmont with that much need for those kinds of facilities.

REP. ELLEN BERGMAN said those who were proponents of the facility being closed kept saying, "they prefer the least restricted...." and did not know what that meant. She could not tell what was restrictive about the facility, nor could she say it seemed much like an institution when she visited it. She felt they would lose many advantages by going to a group-home concept of care. Further, she was concerned about uprooting the residents.

REP. DEB KOTTEL was generally perplexed but remembered the testimony that said there are 70 people who have been identified between both institutions as inappropriately institutionalized. She said she remembered that there would likely be a lawsuit case against the state because of that. A problem is that there are no community-based programs to put those 70 people in because of the lack of funding. She thought the rationale behind it was that they don't have more money going in to set up the community-

based programs, the people stay in the institutions, the threatened lawsuit comes, the state fights the lawsuit. It would cost a great deal, they'd probably lose the suit, be ordered by the court to de-institutionalize those people into community settings and then be back at the beginning. She understood that the idea was to take the money saved from that to build the community facility, put the 70 inappropriately institutionalized people into those community settings, move those who cannot be institutionalized from Eastmont to Boulder, leaving those institutions in place and the net-net would still be the same. This would avoid the lawsuit against the department for not putting those people in the least restrictive setting. If that were true, she felt the responsible thing to do would be to transfer the dollars and set up a community program.

REP. BILL CAREY reviewed a fact sheet from the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. It seemed to him that they made a strong case for the Eastmont closure while freely admitting that Eastmont is an excellent institution. It states that, "if implemented, it would re-allocate over $3 million from a service without a waiting list to a set of _____ (inaudible) [which] many Montanans are seeking out and waiting for." It states that the institutional model is the issue. Apparently people are not signing up to get into the institution, but waiting to get into community-based services. In looking at where to put the money, he thought they were forced to look at where the people affected want it. That was the issue for him.

REP. BILL TASH referred to his notes and the concern about litigation. He felt that many of their decisions were running scared in the event of a lawsuit. He felt that made it very difficult to make decisions and that their decisions should be based on what is right or wrong, rather than on what they might predict could happen. He had noted that in testimony the question was asked what effect the Eihler decision would have in the event Eastmont was closed. The answer was that it wouldn't affect the decision. In regard to threats of lawsuits and constitutionality, he thought those things should be left up to the people in the department or in the Attorney General's office to sort out.

REP. LIZ SMITH had concluded that Eastmont had more federal matching funds and so Eastmont wasn't as costly to the state as group homes would be. Another hang up was that the only way to be committed to Eastmont was by court order. By just addressing group homes, choices and opportunities were being limited. There was agreement that the quality of care was excellent at Eastmont. She felt they needed to be most responsible for those who have no families or have no alternative and should change the commitment criteria and allow it to not be just by court order.

REP. HURDLE asked the committee to look at page 8, line 19 where residential facility, meaning the Montana Developmental Center and Eastmont Human Services Center, is crossed off. Then she asked them to go to page 7, lines 5 - 9, where it says, "community-based facilities." Her point was that because Glendive is an isolated place and because they house fewer than 50 people, it would be possible to make a case for the fact that a community-based facility could mean services that are available for the evaluation, treatment and rehabilitation in a community setting or in an isolated community facility housing fewer than 50 persons.

Motion: **REP. HURDLE MOVED TO AMEND HB 65 TO ADD ON LINE 7, PAGE 2, "OR IN AN ISOLATED AREA OF MONTANA, A FACILITY HOUSING FEWER THAN 50 PERSONS."**

{Tape: 1; Side: B; Comments: Side B is recorded at 2.4 speed.}

REP. BRAD MOLNAR suggested rather than closing Eastmont making it one of the chain of community-based operations.

REP. GRIMES said they might as well vote the bill down if they were going to start tinkering with the department's study, which this amendment would do. Ultimately he felt what they were deciding was to take the same dollars and redistribute them in order to provide for the same number, and eventually more people, with those same dollars in community-based services. He said the amendment would take the reallocation and put it back the way it was. He opposed the amendment, but supported the bill.

Vote: **The motion to amend HB 65 failed by voice vote.**

REP. WILLIAM BOHARSKI requested the amount it would cost to build a group home and what the operating cost for one year would be and how many it would serve.

CHAIRMAN CLARK said the construction cost was $330,000 and the operating cost was $342,000 which would serve six to eight people.

REP. DEBBIE SHEA suggested that the committee examine the impact on the lives of the people who live there. She wondered how many would not survive the transition. She said they should be concerned about the impact on jobs in the area, and there was no way she could support it.

REP. KOTTEL reiterated previous testimony about the 70 inappropriately institutionalized people according to the decision of the psychologists and caretakers. Those people are distributed between Boulder and Eastmont. Eighteen of those have been designated for group homes and the other 52 remain inappropriately institutionalized. She said if the committee voted it down, they needed to come up with the money to put them in group homes and the money is not there. She said if they vote

it up, the money from Eastmont is channelled to group homes and the 52 people are transferred. The ones who cannot go into group homes would go to Boulder. She said she had to have faith in the people who made the decision.

REP. BERGMAN asked what inappropriately institutionalized meant.

REP. KOTTEL replied that it referred to those who can function outside the institution in volunteer-style jobs in the community. The institution is too highly restrictive for those people.

REP. BERGMAN said that was just not true. She had been there and the overwhelming majority at Eastmont, in her opinion, were really not those who can be taught. From what she saw, the most they can handle is stuffing envelopes and make their beds, but they are not able to go into the community to hold jobs.

REP. KOTTEL said her understanding was that between the two institutions there are 70 individuals who can be out in the community. She said they should heed the recommendations of the professionals who have made that decision.

REP. BERGMAN objected to taking everybody's recommendations which don't really make sense to the "rest of us" and felt they should not assume their word for it is accurate.

REP. HURDLE said the same people who had made this decision just spent $10 million to make a smaller institution with fewer beds. She said it looked to her as if it had more to do with their plans for the facility than their concern about the people.

REP. KOTTEL said those were federal funds and the decisions were made because of federal and legal restraints having to do with the condition of the other facility, so it sounded to her as if they were making rational decisions. They are downsizing the institution so that the people who are inappropriately institutionalized would go out to community-based living. She did not see inconsistency in the decision, but a fairly consistent chain of decisions leading in this direction.

REP. HURDLE was concerned about the numbers of people on the waiting list while they are downsizing one facility and eliminating another one.

REP. KOTTEL said the people on the list were waiting for community-based services. There were none on the waiting list for institutional services.

REP. HURDLE said she did not understand why that would be and believed there was more to it than they knew.

REP. MC GEE said the law was changed in 1991 to redefine the developmental problem issue and that was the point. The report stated that there is nothing wrong with Eastmont, but that the

institutional model was the issue. He continued to quote from the report to explain the reasons behind the proposal in HB 65.

REP. CURTISS asked if the 70 people are all developmentally disabled (DD) or whether some of them were in the corrections system.

REP. KOTTEL responded that none of them were in the corrections system, some might be dually diagnosed in terms of being DD with mental illness layovers.

REP. SOFT remembered from testimony that there would be no long-haul savings on it, the cost to build group homes and maintain them would be about the same. There was a $1.3 million closure cost. With regard to the funding, Eastmont is a Medicaid-certified facility so most of the cost associated with a group home is not quite the same. The drain in the general fund is nearly the same.

REP. KOTTEL recalled that it was the staff in both facilities who identified those who were inappropriately placed reinforcing the professional opinion that those people needed community settings.

REP. BERGMAN asked what those people would be doing.

REP. KOTTEL replied that they would be working in smaller settings involved in community projects such as Easter Seals. They would be living in smaller groups developing family-style relationships.

REP. SMITH saw it as cost-shifting rather than cost-saving. She asked **Mr. MacMaster** to research the change of law in 1991. In her view, when a court commitment is made for a person to be institutionalized, there is no choice or flexibility. But she felt that people on the waiting list could be put in Eastmont.

Mr. MacMaster was not familiar enough with the reference in the report and would have to research it.

REP. CHRIS AHNER expressed concern about uprooting the people from one institutional setting to another. She pointed out that the need would be $4,500,000 to build the homes for the people on the waiting list. She asked **REP. SOFT** to recall what the experience of local groups homes was in reference to families visiting the residents in that setting.

REP. SOFT said there were a few who received regular family visits and there were others who did not. There did not seem to be more visits to people in group home settings than in institutions.

REP. AHNER recalled the numbers from testimony. She said that demonstrated that their families become the ones they live and

work with rather than their natural families. Therefore, she felt this would have a negative affect on them personally.

REP. MOLNAR asked if there was any testimony to demonstrate if the money was used to build the group homes that there would be enough to handle the population. There was consensus on the committee that there would not be enough and that there would continue to be a waiting list for the group homes. He then wanted to know what they would do with the people once Eastmont was closed.

REP. BOHARSKI pulled from his experience as a disabled person and said that the thought of community-based services sounded like a good idea, but it is not always realistic. He expounded on the benefits of a facility such as Eastmont. His suggestion was that they take the $1.3 million to build and staff a few group homes and keep Eastmont operational. He did not think just saying someone was placed inappropriately was good enough. He felt the facility had demonstrated that it had a place in the continuum of care and the proposal was premature and that the bill should be tabled while further study was made of the situation.

CHAIRMAN CLARK pointed out that the committee was moving into the time for hearing of other bills and postponed further action on HB 65.

{Tape: 1; Side: B; Approx. Counter: 35.9}

HEARING ON HB 323

Opening Statement by Sponsor:

REP. WILLIAM RYAN, HD 44, presented HB 323 which enables a person who has a concealed weapon permit to purchase firearms without going through a five-day waiting period. This would save time and paperwork since those people would already have gone through a background check and scrutiny in applying for their concealed weapons permit.

Proponents' Testimony:

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, said the bill was brought because of hardships in the gun shows which came about when Judge Loble declared the Brady bill unconstitutional because it was an unfunded mandate. He believed this was to avoid a greater conflict with the Tenth Amendment. He said the waiting period was changed to a cooling off period, but he agreed that the people wanting to purchase a firearm had already been so thoroughly scrutinized in applying for and receiving the concealed weapons permit that they go far beyond the Brady concept.

therefore the instructor was immunized against careless instruction.

SEN. BAER repeated his previous answer.

REP. CAREY understood that gun instructors are not vicariously liable now.

SEN. BAER replied that under current law vicarious liability can be implied and inferred under many situations and they want to remove the stigma from the firearms instructor simply to encourage them to be willing to promote the safe handling of firearms in this state.

REP. CAREY understood that the bill would raise the standard from carelessness to gross negligence of the instructor.

SEN. BAER affirmed the statement.

REP. CAREY asked if the sponsor knew of any lawsuits against a Montana gun-safety instructor.

SEN. BAER said he did not.

REP. CAREY referred again to **Mr. Hill's** testimony that SB 90 immunized instructors who meet no criteria at all and who offer gun instruction for profit and asked if the sponsor agreed.

SEN. BAER did not and recalled some amendments to the bill which would qualify the instructors it pertained to.

Closing by Sponsor:

SEN. BAER closed by asking the committee to keep in mind that it was a safety-promotional bill and contained no mischief or hidden intent for profit on anyone's part.

EXECUTIVE ACTION ON HB 65 CONTINUED

Discussion: **REP. SOFT** offered a solution to the committee as a suggestion which entailed adopting the sponsor's amendments, then utilizing the $1.3 million earmarked for the closure of Eastmont for the start-up and operating costs for two group homes, downsize Eastmont over the next biennium to three 24-bed units located on the same campus and transfer the 19 patients to Boulder (MDC-program). He suggested that the employees at Eastmont be offered the opportunity to form a private, not-for-profit corporation and purchase the property to run three community-based group homes. If they did not purchase and privatize it, then offer it to another entity and if not taken up by anyone, then move on the bill as submitted to shut it down.

REP. GRIMES said that they were not selling the facilities but closing the current use of the facilities. This allows the department to find another use for them. He suggested that **REP. SOFT'S** intention could be accomplished by adding to the bill that it would be sold. However, that might be detrimental as well since the department could find an alternative use for it, then that would benefit the whole community through provision of some different types of jobs. Conceptually he liked the suggestion, but thought it might tie their hands more than it would assist with finding another use for that facility.

REP. ANDERSON said they had heard testimony on the alternatives of leaving the facility open or closing it but there had been none on this current suggestion. His inclination was to pass it unamended on to the Appropriations Committee where the decision could be more appropriately made.

REP. SMITH felt that the committee was on the spot to make decisions without expertise or consensus of opinion. She wondered if they were premature in trying to make the decision. She said she would be opposed to closing Eastmont at this time.

Motion: **REP. HURDLE MOVED THE JOHNSON AMENDMENTS.**

Discussion: **REP. GRIMES** opposed the amendments because of the cost and explained his reasons. He was told by Appropriations Committee members that their decision would be affected by how this committee acted on the bill. The question for him was where they could get the most from the money that is available.

Vote: **The motion failed by roll call vote, 7 - 10. REP. AHNER later changed her vote, making the count 8 - 9.**

Discussion: **REP. SOFT** asked if the bill should be sent to appropriations with a strong recommendation that they look at the other concepts which he had proposed as a part of the process.

REP. ANDERSON believed it could be sent to them with recommendations as proposed and if they were to change the bill from the way it was sent to them, there would be a conference committee to come to some consensus.

REP. SOFT and **CHAIRMAN CLARK** discussed how to facilitate the process in the time allowed. **REP. BOHARSKI** and **REP. GRIMES** also had suggestions for facilitating the process.

{Tape: 3; Side: B}

Discussion: **REP. WYATT** explained her reasoning for suggesting reconsideration of the Johnson amendments.

Motion: **REP. MC GEE MOVED TO ADOPT THE SOFT CONCEPTUAL AMENDMENTS WHICH INCLUDED THE JOHNSON AMENDMENTS.**

Discussion: **REP. MC CULLOCH** felt there was no guilt-free decision in this situation. She asked if this amendment would water-down the community-based part of the bill in an effort to continue with the Eastmont facility.

REP. SOFT explained his conceptual amendment.

REP. MC CULLOCH asked if she understood that would not short-change or water-down any of the already planned facilities (other group homes) in other parts of the state.

REP. SOFT did not believe it would and that it would put three on line right away.

CHAIRMAN CLARK asked, without objection from the committee, that **REP. JOHNSON** and someone from the department address the conceptual amendment.

REP. JOHNSON described the purpose of his amendments and how the conceptual amendments would affect the bill. He said he could not address how the community would feel and react to it. He was not opposed to parts 1 and 2, but did not know about parts 3 and 4 of the proposal.

Bob Anderson, Department of Corrections, addressed the conceptual amendments in terms of how the task force had viewed downsizing Eastmont in the DD system and detailed the problems they had felt would arise. He could say that it probably would cost more than the proposal on the table and described why. He reminded the committee that this bill affected two appropriations committees. He further suggested that the committee look at the original proposals which came out of the task force. He asked that the Johnson amendments be adopted so that the commitment laws are changed if Eastmont were left open.

Information: **EXHIBITS 7, 8, 9, 10, and 11** are included.

Motion/Vote: **REP. WYATT MOVED A SUBSTITUTE AMENDMENT TO RECONSIDER THE JOHNSON AMENDMENTS WITHOUT THE SOFT CONCEPTUAL AMENDMENTS. The motion carried by roll call vote, 10 - 8.**

Motion/Vote: **REP. ANDERSON MOVED HB 65 DO PASS AS AMENDED. The motion carried 10 - 8, REPS. SHEA, ANDERSON, MC GEE, MC CULLOCH, CAREY, GRIMES KOTTEL and SOFT voting no.**

Motion: **REP. WYATT MOVED TO ADJOURN.**

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

February 7, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 65** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10

3. Title, line 12.
Following: "53-20-146,"
Insert: "AND"
Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ","
Insert: "AND"

4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"

5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

2/8

Committee Vote:
Yes 10, No 8.

321728SC.Hdh

6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections

7. Page 30, lines 13 through 17.
Strike: Section 24 in its entirety

8. Page 30, line 19.
Following: "53-20-105"
Strike: ","
Insert: "and"
Strike: "53-20-502,"

9. Page 30, line 28.
Strike: "**dates**"
Insert: "**date**"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/7/95 BILL NO 1165 NUMBER 1

MOTION: Amend as attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	~~✓~~
Rep. Ellen Bergman		
Rep. Bill Boharski		✓
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

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Strike: "53-1-202," on line 9 through "53-1-402," on line 10

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9. Page 30, line 28.
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Insert: "**date**"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/1/95 BILL NO. HB65 NUMBER 2

MOTION: Amend as Attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

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Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"

5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

6. Page 7, line 1 through page 14, line 23.
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Strike: subsections (2) and (3) in their entirety

No-Johnson Amendments

No-bill

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H Bill No. 65

Representative Bill Carey HD67 voting _____
(aye or no)

"and all amendments pertaining thereto." wjc

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 65

Representative Chris Aliner voting NO AS IS - (aye or no)

No for discontinuing EASTMONT

Yes for keeping Eastmont open / Amendments by Dr. Johnson in front

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date_____

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

House Bill No. 165; "No" to closure of Eastmont
"Yes" to revisions of definitions
amendment

Representative Rep. Liz Smith voting_____
(aye or no)

PROXY —

Support HB 65

Opposed to all [redacted] amendments that would change the intent.

Duane Grimes

DATE 2/7/95
HB 65

Glendive United Methodist Church

Towne and Kendrick
Box 200
GLENDIVE, MONTANA 59330

January 23, 1995

The Honorable Members of the Human Services Committee
Montana State Legislature
Helena, Montana

Representative John Cobb, Chair
Representative Betty Lou Kasten
Representative Beverly Barnhart

Senator Charles Swysgood
Senator John Lynch
Senator James Burnett

Dear Friends,

We, the undersigned clergy of Glendive, write with enthusiastic support for the excellent, caring services provided by the Eastmont Human Services to its residents in a homelike atmosphere. Dispersing most of the residents to Group Homes and the remainder to Montana Development Center at Boulder will change forever the life these residents have come to know.

What is the quality of life at Eastmont in which these residents thrive?

1. A large number and variety of staff who are familiar with each resident, who can quickly step in for emergencies or when residents have a special need situation.

2. Annual progress in achieving personal goals. Staff members tell of the steady and marked progressive changes residents have made since moving to Eastmont as seen from their many and various perspectives.

3. Professional physical therapy supervised in large, cheerful, well equipped areas.

4. Professional occupational therapy that addresses a resident's capacity to work within Eastmont and other possible settings.

5. Professional educational organization of the residents into 5 units of 10 each, who are similar in need and aptitude, with personalized plans for the group and individuals.

6. Trained staff persons, with the necessary knowledge and comprehensive experience to quickly procure from Medicaid and Medicare the prescribed treatment needs as ordered by physicians, physical therapy and occupational therapy. (No simple task!)

7. Twenty-four hour a day special needs professional and nursing care that is so vital to the quickly changing conditions and needs of the residents.

8. A comprehensive, multi professional Personal Annual Evaluation of each resident's self help skills, social and recreational skills, physical and occupational therapy progress, communication skills and progress with behavior.

9. Professional Dietician services that ensure the quality and correctness of the necessary therapeutic and modified diets required by the residents.

Providing the above tangible quality of life assets in the required most intensive level group home settings CANNOT BE DONE IN SOME INSTANCES (Items 1-5), AND CANNOT BE DONE IN OTHERS WITHOUT COSTLY DUPLICATION OF FACILITIES, EQUIPMENT AND TRAINING.

The Federal Medicaid requirement for serving Eastmont's residents mandates "A continuous, aggressive active treatment program" carried on through twenty four hours a day. Can a series of group homes do that as professionally and efficiently as Eastmont can considering the level of functioning of the residents?

Today's challenging, honorable belief is that everyone is entitled to live in the least restricted environment possible. Sometimes this has achieved positive results. Other times it has not and has created serious problems. (The homeless in our streets for example). Who best determines what the "least restrictive environment" is for persons who require 24 hour a day active attention in order to function? Who knows the issues better than those with the "hands on" practical experience?

We know of no resident's family who has complained or requested this change. We wonder why the legislature would want to take its valuable time.....and spend precious tax funds.....to try to fix something that isn't broken.

We respectfully ask that Eastmont Human Services Center remain intact and funded to continue its excellent care and services. We see and hear about Eastmont's high quality work daily! It is a witness to the intangibles of love, dedication, spirit and reverence that radiate among the Eastmont staff and the Glendive community and which make Eastmont's residents thrive!

Sincerely yours,
Members of the Glendive Ministeral Association

Pastor Dennis Franklin – Assembly of God
Pastor Kenneth Sinde – Zion Lutheran
Pastor Jimmie Harrold United Methodist
Pastor Allen Solheim – Evangelical Church
Pastor James Sinclair – First Baptist Church
Pastor Harry J. Fogue – Christian & Missionary Alliance Church
Pastor Arlis D. Hand – Community Bible Church

EXHIBIT 2
DATE 2/2/95
HB 65

EASTMONT HUMAN SERVICES CENTER

January, 1995

Eastmont Human Services Center (EHSC) is an intermediate care facility presently serving 49 adults ranging in age from 25 to 72.

The residents that live at EHSC are diagnosed as profoundly mentally retarded and many have severe physical handicaps. This means that their IQ's are below 25, compared to the average adult IQ of 110, most have a functioning age of under 2 years, many are wheelchair bound and do not communicate verbally. All of the residents require 24 hour supervision to ensure their safety. The majority of the residents need an intense amount of staff assistance to dress, bathe, and eat, as well as to complete all other aspects of their daily living routine. Many of the residents have multiple health conditions; for example, 23 residents are diagnosed with seizure disorders, others have heart disorders, mental illness, Alzheimer's, kidney and liver disorders, and those disorders related to age as well.

The kinds of treatments and services that are provided at EHSC include daily programs to maintain and encourage participation in daily routines. Given that the residents are functioning at 2 years old or less and with multiple physical handicaps and health concerns, their daily program may include: learning to toilet on a schedule to decrease the number of accidents due to lack of ability to be toilet trained, learning to pick up a named object, having arms and legs moved by a caretaker to keep flexibility and discourage further atrophy, passing objects to others to increase awareness of surroundings, and learning to fold a washcloth in half in preparation for entry into the Vocational Program.

Community outings are also part of the services provided and require adapted vehicles to transport the residents to and from the activities. These activity programs are mainly used to provide exposure to other sights, sounds, and textures.

EXHIBIT 4
DATE 2/2/95
HB 65

ATTENTION: EASTERN MONTANA RESIDENTS

As indicated in a previous newsletter, a proposal to close Eastmont Human Services Center is being moved forward.

The proposal, if included in the Executive Budget and forwarded to the Legislature in 1995, would move the residents into group homes. By 1997, Eastmont Human Services Center would be closed.

Eastmont Human Services Center provides excellent care and rehabilitative programs for the severely developmentally disabled.

Please read the attached materials. Questions concerning the issue should be directed to Artis Zody, Chairman, Retain Eastmont Committee, 300 E. Barry, Glendive, Montana, 59330.

EASTMONT

The concept of a community based facility to serve the needs of Developmentally Disabled persons in eastern Montana was brought before the 1967 session of the legislature. Legislation establishing Eastmont was passed and Eastmont opened its doors in 1969.

Parents of those individuals in need of services provided by Eastmont, brought them in on Sunday and picked them up Friday. This arrangement provided respite for the parents during the week. This allowed the residents to receive the needed services and training. Family ties were maintained by the individuals returning home over the weekends.

Another benefit of this approach was that it made it possible for the parents to visit with staff and thereby receive advice and information for carrying on the training while the residents were at home.

Eastmont Human Services Center now serves a maximum of 50 adults who are mentally retarded/developmentally disabled. They range in age from 25 to 72 and reside at Eastmont on a full time basis.

The facility is licensed by Medicaid. These regulations require the facility to provide an aggressive and continuous active treatment program for each individual resident.

Each resident is evaluated annually in the following areas:

Psychological /Behavior Management

Developmental (i.e. dressing skills, eating skills, Personal hygiene skills, attending to tasks, etc.)

Recreation/Leisure

Communications

Medical

Nutrition

Occupational Therapy

Physical Therapy

An interdisciplinary team then meets to determine strengths and weaknesses of each individual. A treatment plan is devised for the coming year. The plan is monitored monthly to ensure the resident is receiving the care and treatment needed.

The residents are actively involved in the community. They go out for meals and snacks at local restaurants, attend activities such as fairs, rodeos and various types of ball games and shop at various businesses.

In order to provide the type of program that is needed for the residents, the facility has 105 full time equivalents (F.T.E.) allocated. This translates into 110 - 120 full and part time employees.

The State of Montana provides the facility with a budget of approximately $3.5 million. Medicaid then reimburse the State approximately 70% of the total budget

Eastmont - Present

"Array of Services"

Currently, the Development Disabilities services in Montana provide the following:

1. **Eastmont Human Services Center. Residential campus style center. Has 49 residents at present.**

2. **Intensive care group homes--Up to six residents.**

3. **Standard group homes--Up to eight residents.**

4. **Transitional living; individual apartments but staff available in same building.**

5. **Independent living; independent of others but services available as needed.**

6. **Supported living; Aids come to home to help.**

7. **Montana Developmental Center, Boulder; Room for 110 residents.**

The Committee believes that the Eastern Montana Human Services Center is an option for placement in the services available to the developmentally disabled.

EXHIBIT 10
DATE 2/7/95
HB 65

EASTMONT RETENTION COMMITTEE

POSITION STATEMENT

IT IS OUR POSITION THAT THE PROPOSAL TO CLOSE EASTMONT HUMAN SERVICES CENTER IN 1997 IS NOT IN THE BEST INTEREST OF THE RESIDENTS OF THE CENTER OR IN THE BEST INTEREST OF THE DEVELOPMENTALLY DISABLED POPULATION IN THE STATE OF MONTANA FOR THE FOLLOWING REASONS:

1. A DEDICATED STAFF **DELIVERS QUALITY SERVICES** TO THE RESIDENTS OF **EASTMONT HUMAN SERVICES CENTER**. IN OUR OPNION, THE BEST GROUP HOME SETTING MAY NOT BE ABLE TO MATCH THESE SERVICES.
2. USING THE CRITERIA OF **"LEAST RESTRICTIVE ENVIRONMENT"** IT IS OUR FIRM BELIEF THAT THIS CRITERIA IS **MORE THAN MET** AT **EASTMONT HUMAN SERVICES CENTER.**

   THE **RESIDENTS ARE ACTIVELY INVOLVED IN THE COMMUNITY.** THEY GO OUT FOR MEALS AND SNACKS AT LOCAL RESTAURANTS. ATTEND CHURCH AND ACTIVITIES SUCH AS FAIRS, RODEO, BALL GAMES, BOWLING, AND SWIMMING. THEY ALSO GO TO THE LIBRARY AND SHOP AT VARIOUS BUSINESSES.
3. IT APPEARS THAT AN **EXPENDITURE OF 1.5 TO 2.0 MILLION DOLLARS IN ADDITION TO THE CURRENT OPERATING BUDGET WILL BE REQUIRED IN THE CLOSING OF EASTMONT HUMAN SERVICES CENTER.**

4. THERE ARE OVER **1300** PERSONS ON THE COMMUNITY **WAITING LIST** WHO ARE IN NEED OF SERVICES. OF THESE, OVER **450 RECEIVE NO SERVICES THROUGH AGENCIES CONTRACTING WITH THE DEVELOPMENTAL DISABILITIES DIVISION (DDD),** WHILE **OVER 850 ARE UNDERSERVED INDIVIDUALS** NEEDING ADDITIONAL OR DIFFERENT SERVICES THAN THOSE THEY CURRENTLY RECEIVE THROUGH THE DDD. **FOUR HUNDRED (400) PERSONS ON THE COMMUNITY WAITING LIST ARE REQUESTING SERVICES SIMILAR TO THOSE WHICH WOULD BE NEEDED BY THE INDIVIDUALS PROPOSED TO BE MOVED FROM RESIDENTIAL FACILITIES.** OF THIS GROUP **300 RECEIVE SOME** DDD FUNDED **SERVICES,** WHILE OVER **100 RECEIVE NO SERVICES**.

5. **EASTMONT HUMAN SERVICES CENTER** CURRENTLY IS SERVING A SEGMENT OF THE DEVELOPMENTALLY DISABLED POPULATION DESPERATELY IN NEED OF THESE SERVICES. GIVEN THE SITUATION FOR DELIVERY OF SERVICES TO THE DEVELOPMENTALLY DISABLED POPULATION AS INDICATED BY THE FIGURES ABOVE, THE **EASTMONT RETENTION COMMITTEE STRONGLY RECOMMENDS THAT THOSE MONIES THAT WOULD BE EXPENDED TO CLOSE EASTMONT HUMAN SERVICES WOULD BE FAR BETTER SPENT TO BRING SERVICES TO THOSE IN NEED.**

EXHIBIT 11
DATE 2/7/95
HB 65

HB 65

HB 65 was recommended by the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. The bill accomplishes two major goals:

1. Revises current commitment laws to clarify language and definitions, improve the commitment process, and eliminate current sunset provisions.

2. Discontinues Eastmont Human Services Center's function as a residential facility for the developmentally disabled.

Note: Changes in item 1. are needed even if Eastmont is not discontinued.

Over the past two decades Montana has faced increasing pressure to reorganize its services for individuals with developmental disabilities. In 1989 the Governor's Human Service Sub-cabinet appointed an Interagency Task Force on Developmental Disabilities including representatives from the five human services departments, advocates, family members, institutional and community service providers. Over the last four years the task force has recommended and implemented major initiatives that have substantially reduced and enhanced institutional services while also expanding and improving community services for the developmentally disabled. HB 65 reflects the task force's continuing effort to improve services for indivividuals with developmental disabilities now and in the future.

Through its ongoing review and evaluation of Montana's Developmental Disabilities Service System, it was determined by the task force that many of the individuals currently being served at both Eastmont and the Montana Developmental Center (MDC) could and should be served in less restrictive community services. From this evaluation the task force developed a specific plan to expand community services for approximately 66 individuals in FY 96-97, and for an additional 12 individuals in FY 98-99. These 78 individuals would come from both Eastmont and MDC, with Eastmont discontinuing as a residential facility effective **January 1, 1997**. Also, as part of this plan, revisions in the commitment laws were recommended. Passage of HB 65 is needed to carry out this plan.

HB 65 is not being presented as a criticism of Eastmont's facility, services or staff; and it is <u>not</u> being presented as a cost savings measure. The bill proposes to reallocate current level resources from institutional services to community services, and is being recommended for the following reasons:

1. <u>Philosophy of Normalization</u> - Making available to persons with developmental disabilities the patterns of everyday life which are as close as possible to regular circumstances and normal ways of life and society. Community services can better provide this normal environment than institutions.

2. State and Federal Laws - State law and federal regulations require individuals with a developmental disability be committed to institutional facilities only when they cannot be safely and effectively treated in community based programs. Assessments on 173 individuals committed to institutions indicate that approximately 70 could be served in current types of community based programs.

3. Eastmont Mission - Over the last five years there have been no new commitments to MDC or Eastmont of the types of individuals resembling those being considered for community placement under this proposal. Also the majority of clients being served at Eastmont could be moved to community services. This calls into question "what is the current or future mission of Eastmont?"

4. Reallocation of Resources - When possible, the reallocation of resources from institutional services to community services expands our ability and capacity to provide services.

5. Future - Future needs for institutions is diminishing. Parents of kids with developmental disabilities tell us they will not accept institutional placement as an option for their children.

As part of this plan, the Department Corrections Human Services (DCHS) has recommended funding for an employee transition and benefit package for affected Eastmont employees, and is also researching alternative uses for the Eastmont facility. It is imperative that local officials, labor organizations and legislators also assist in the effort to find an alternative use for the facility.

HB 65 is drafted rather unusual as it requires 3 effective dates. Refer to Section 27:

1. The first effective date is the date of passage and will implement all the commitment language changes but leaves Eastmont and the definition of seriously developmentally disabled alone.

2. January 1, 1997 - keeps in all of the commitment language changes and also eliminates Eastmont.

3. January 1, 1998 - keeps in all commitment language changes, eliminates Eastmont, and changes the definition of seriously developmentally disabled.

The bill was drafted in this manner so effective dates correspond to dates of patient transfers. It also allows for changes in the commitment language to be implemented even if Eastmont is not discontinued, simply by amending out items 2. and 3. from Section 27.

COMMUNITY SERVICE ALTERNATIVES TO EASTMONT(HB65)

Proposal: House Bill 65 and the Executive Budget both contain parts of a proposal to close Eastmont Human Services Center(EHSC) and re-allocate the funding to develop community based programs for 48 current residents of state operated institutions for people with developmental disabilities. The plan is based on the recommendation of the Interagency Task Force on Developmental Disabilities, a group made up of parents, services providers, advocates and state agency personnel.

The following are the questions that are most often asked regrading the proposal:

1. **What community services will be developed?**

Answer: The plan calls for developing up to eight new six-person intensive group homes and accompanying day services in communities across the state. Fewer homes may be constructed if current group home residents who are seeking other service alternatives are enabled to move into more integrated living situations such as supported apartments. People from the institutions would then be able to move into the openings created in existing homes. This kind of approach would allow more people to immediately benefit from the Eastmont initiative and reduce the need for new home construction.

2. **What will the group homes be like?**

Answer: The homes are specially constructed to meet the needs of people with disabilities in accordance with nationally recognized health and safety standards. Homes are totally physically accessible and barrier free and include built-in fire sprinkler systems. Great care is taken to ensure that the homes are attractive and that they blend into the neighborhoods in which they are located. The cost of construction is between $250,000 and $300,000 per home.

3. **How will the homes be staffed?**

Answer: During the hours that people are awake and in the home a minimum of three staff persons will be on duty. At night there will be at least one staff person who is awake and working in the home. Staff receive training in all areas of working with people with disabilities, including, but not limited to: first aid, CPR, supervising the administration of medications, infection control and other health care procedures, and behavior management and other teaching techniques.

4. What will people do during the day?

Answer: People who live in group homes leave the home during the day in order to attend a day program. The activities at the day program are based on the needs and desires of the persons served. Some people work or receive training at the day program; others may receive the assistance and support they need to find and keep a job, if that is possible.

5. Who will operate the services?

Answer: Services are delivered by private not-for-profit corporations under contract with the Department of Social and Rehabilitation Services(SRS). Each corporation is governed by a board of directors made up of citizens with an interest in services to people with disabilities. SRS currently contracts with 52 agencies to provide services to almost 3,300 people with developmental disabilities and their families.

6. Will specialized health related services such as nursing or occupational and physical therapy be available?

Answer: In order to deliver services, the intensive group home provider agency must demonstrate that all the needs of the people they will be asked to serve can be met, including needs for specialized services. Some community agencies directly employ therapists and nurses. Most agencies contract with private providers or home health agencies to deliver these services based on individual need(Eastmont also contracts with private providers for some of these services). No one will move to a place that does not have the resources readily available to meet their specific needs, including specialized therapies.

7. What will the proposal cost?

Answer: When fully implemented the annual cost of the new community services is virtually the same as the cost of operating EHSC, with a small projected general fund savings of about $50,000 per year. There is a one time cost to make the transition to community services during the 1997 biennium of about $1.3 million in state general fund. The one-time funding covers start-up costs for new group homes, costs in phasing out the EHSC facility and employee assistance costs for EHSC staff.

8. Why not spend the money on people waiting for community services?

Answer: Since the proposal re-allocates money that the state is already spending on one type of service to another more appropriate type of service, using the money to address the needs of people on the waiting list is not an option. Addressing the immediate needs of the waiting list would require an ongoing appropriation of additional funding, this proposal does not require any more money once it is fully implemented. The Eastmont closure will, however, have a dramatic impact on the people who will need services in the future. If implemented, the plan will re-allocate over $3.0 million from a service without a waiting list to a set of services that many Montanans are seeking out and waiting for.

9. What's wrong with Eastmont?

Answer: The plan to develop community services is not intended as an indictment of the way Eastmont provides treatment. Eastmont does a good job of providing residential services within the framework of an institutional model of service. The institutional model is the issue. For some extremely aggressive people and some people who require total care and/or are medically fragile, institutions are an appropriate service option. The vast majority of the people with developmental disabilities who live at Eastmont do not have these kinds of needs. Even the most caring and dedicated professionals can't overcome the built-in limitations that are part of serving large numbers of people living in an big residential facility. Because of the limitations of the service model, only folks who really need to be there should be placed in institutions; that's what this discussion is all about.

10. What about the Montana Developmental Center?

Answer: Some states have taken the position that institutions have no role to play in services. Montana's plan for developmental disabilities services has, however, defined a specific role for state operated institutions and assigned that role to Montana Developmental Center(MDC). The mission of MDC has two distinct parts: 1) the treatment of people with severe behavior problems that present a significant danger to themselves and others. 2) services for some people who require total care and may have severe medical conditions. Some of the long term residents of MDC do not meet either of the criteria described above; they will be considered for placement in the community if the plan is approved. All of the people admitted to the institution since the state commitment

law was revised in 1991 fit the new MDC mission. In addition to the Eastmont proposal, the Executive Budget also contains funding to reduce the population at MDC by 18 people. Six of the people will be placed into community services this year, the remainder will be placed in Fy 97. These placements are necessary in order to accommodate the MDC remodeled campus and will go forward regardless of whether or not Eastmont is closed.

11. What do the people in Eastmont look like?

Answer: The average age of the forty-nine people who live at Eastmont is 45 years old. The oldest person is 72, the youngest is 25. The average resident of Eastmont has lived there for a little over 9 years. Seven of the people are from communities east of Billings. Assessments done within the last year indicate that the "typical" Eastmont resident requires a good deal of personal assistance due to their limited ability to meet their own basic self-care needs(feeding, dressing, bathing, toileting etc.). Some residents engage in behaviors that are a challenge for staff to deal with, but few if any present a significant danger to themselves or others. A number of people receive occupational, physical and speech therapy, but the majority of the services are delivered by EHSC direct care staff under the periodic supervision of the contracted professionals. On-site nursing is a need for a very limited number of people.

12. Can community programs really serve the kind of people who live at Eastmont?

Answer: The majority of people with developmental disabilities in Montana who have needs similar to the Eastmont population are already served in community programs. Many of the adults served in intensive group homes and day services have the same needs as the Eastmont group. Since there is no one under the age of 18 in either EHSC or MDC, all of the kids with similar needs are in the community. A survey of parents and advocates of people placed from MDC and EHSC over the last four years revealed that while they were generally satisfied with services at the institutions, having experienced both institution and community services, they prefer the community service model.

13. Who will be placed into community services?

Answer: Assessments done within the last year indicate that at least 70 residents of EHSC and MDC could be served in community programs. If the proposal to close Eastmont is approved, the needs of all of the residents of the two institutions will be re-assessed. The only people who

will be considered for placement will be the individuals from MDC and EHSC who have been determined to be ready after the re-assessment of their needs is complete. Eastmont residents who do not go to community programs will be transferred to MDC.

14. Where will the services be located?

Answer: Efforts will be made to accommodate the desires of the individuals who will be placed. If, for example, a resident has a brother or sister in Butte who would like them closer to home, we will try to develop the services in Butte. Additional criteria that will come into play when making the decision on where to develop services will be the availability of the necessary specialized support services and the long term demand for the group home services in that location.

15. What is the impact on the Glendive community if HB 65 is passed?

Answer: Currently Eastmont has 105.12 positions (fte) and employs approximately 115-120 people. These state jobs would be eliminated under this proposal. The Task Force was unable to identify an alternative mission for EHSC in the developmental disabilities service system. DCHS is currently looking into alternative uses for the Eastmont facility outside of developmental disabilities. The development of an alternative program or use for the Eastmont facility will require assistance from the local community leaders and legislators, and would help mitigate job loses and impact on the community. Also, the Eastern Montana Veterans Home will soon be providing an additional 70-80 jobs and SRS will be looking at developing at least one or even two group homes in Glendive.

16. What is being done to assist the Eastmont employees if this proposal goes forward?

Answer: The Executive Budget includes an Eastmont employee assistance package. This package calls for the continuation of the current state reduction in force (RIF) registry, state employee insurance participation for six months after layoff, moving assistance, and a severance/incentive payment of $650 for every year of state service. Also the Department of Labor will provide training and layoff assistance to Eastmont employees under Title III of the Job Training Partnership Act.

17. Why are we doing this?

Answer: For more than twenty years Montanans have engaged in an ongoing, sometimes lively and contentious, discussion regarding the best ways for the state to assist and support its citizens with developmental disabilities. The place where Montana has drawn the line separating those who can best be served in the state's institutions from the people who can and should live in the community has changed over the two decades. Part of the change is a product of the maturation of community programs. Playing an even larger part in the move towards community services are the changing expectations of parents, advocates and the people with disabilities themselves. The Eastmont proposal represents the latest chapter in the ongoing discussion. **It's a fairly straight forward policy question: What is the highest and best use of the money the state has chosen to spend on developmental disabilities services.**

Some facts are clear:

1) There is no waiting list to get into Eastmont;

2) The only admissions to Eastmont over the past five years have been people transferred from MDC;

3) People are waiting in line for community services;

4) Because of special education and supports for families, no kids are in state operated institutions;

5) The families of the kids with disabilities who have kept their children at home are telling us they do not want institutional services in the future.

Boiled down to its simplest form, the proposal to close Eastmont is an attempt to listen to the customer and re-allocate scarce resources away from a service where demand is decreasing to the services people are telling us they want in the future.

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 17:22
RUN DATE.... 04/07/95

SENATE JUDICIARY

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-JUDY KEINTZ
NORMAL SCHEDULE => SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 9:00 A.M.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0026	WYATT, DIANA 1/17	2/03	REVISE MEDICAL LEGAL PANEL ACT	2/03 CONCUR VOTE:		2/03
HB0037	ELLINGSON, JON 1/21	2/02	REMOVE STATUTE OF LIMITATIONS EXTENSION FOR INCARCERATED CRIMINALS	2/02 CONCUR VOTE:		2/02
HB0041	SMITH, LIZ 2/21	3/06	PROVIDE FOR ADMINISTERING MEDICATION INVOLUNTARILY TO MENTAL HEALTH PATIENT	3/06 CONCUR AS AMENDED VOTE:		3/08
HB0046	SIMON, BRUCE 2/01	3/01	EXPAND SCOPE OF CRIME OF ARSON	3/02 CONCUR VOTE:		3/03
HB0055	BOHLINGER, JOHN 3/06	3/15	CONFORM CHILD SUPPORT INCOME DEDUCTION ACT TO FEDERAL REGULATIONS	3/15 CONCUR VOTE:		3/16
HB0064	EWER, DAVID 2/20	3/07	REQUIRE AGE AS BONA FIDE QUALIFICATION FOR POLICE OFFICER POSITION	3/07 CONCUR VOTE:		3/08
HB0065	MCKEE, JEANETTE 2/21	3/15	REVISE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR DEV. DISABLED	3/15 CONCUR VOTE:		3/16
HB0069	FISHER, MARJORIE 1/27	3/01	REVISE CRIME VICTIMS' LAWS	3/02 CONCUR VOTE:		3/03
HB0074	HOLLAND, DON 2/20	3/10	ALLOW COURT OF RECORD TO ORDER JURY FEE BE PAID BY REQUESTOR OR LOSING PARTY 3/13, 3-14, 3-15	3/22 CONCUR AS AMENDED VOTE:		3/23
HB0083	HERRON, JACK 1/18	2/08	REVISE CRIME OF OBSCENITY & PROVIDE FOR FORFEITURE OF OBSCENE MATERIAL 2/14	3/02 ADVERSE RPT ADOPT VOTE:		3/03
HB0084	STORY, ROBERT 2/21	3/14	CLARIFY PLACEMENT OF DEFENDANTS SUFFERING FROM MENTAL DISEASE OR DEFECT	3/14 CONCUR VOTE:		3/15

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 15, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Senator Estrada.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 55, HB 65, HB 366, HB 186, HB 322
Executive Action:	HB 55, HB 65, HB 322
	Discussion only: HB 547, HB 256, HB 345, HB 186, HB 366, HB 74

HEARING ON HB 322

Opening Statement by Sponsor:

REPRESENTATIVE CHASE HIBBARD, House District 54, Helena, introduced HB 322, which he said was an important piece of legislation for the Montana Innkeepers' Association. They had discussed this at a recent convention and determined a need for legislation. He said it was a variation of a model passed in Idaho and Minnesota in 1993, and four others. Hotels and motels are held to a very high standard when it comes to how they may treat guests. Unfortunately, sometimes they are confronted with

If they considered it a dangerous situation, they would contact a law official for guidance. **SENATOR NELSON** asked how it differed. **Mr. Bryan** said it would give them some back-up for what they needed to take care of.

Closing by Sponsor:

REPRESENTATIVE HIBBARD closed on HB 322. He stated it would be fine if the committee would like to consider an amendment on Page 1 regarding the concern raised about the combination of being drunk and acting in a disorderly fashion. The bill was patterned after a national model. It had been adopted in eight other states. It gives the growing accommodations industry guidelines and standards for dealing with unfortunate, but real problems they encounter. The perceived Constitutional problems with the bill were amended out in the House Judiciary Committee. He felt the proposed amendment was reasonable. He asked for favorable consideration. He stated that **SENATOR HALLIGAN** had been kind enough to carry the bill to the Senate if it should be approved.

HEARING ON HB 65

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE McKEE, House District 60, Hamilton and Corvallis, sponsored HB 65. She said the bill had been amended by the House. The bill was requested by the Governor's Human Service Interagency Task Force on Developmental Disabilities and supported by the Governor's Office, SRS and DCHS. The part that had been amended out dealt with the closure of the Eastmont facility in Glendive. They were not asking that be re-instated. They had accepted the House decision that it was not the time to deal with that issue. The bill would revise the laws governing the commitment of individuals to institutional programs who are determined to be seriously, developmentally disabled. These changes would clarify language and definitions in the statute, improve the commitment process, and eliminate current sunset provisions dealing with the definition of seriously, developmentally disabled individuals currently in the law. Passage of HB 65 would ensure the important changes would be made and also would prevent the definition of seriously, developmentally disabled from sunsetting back to the old definition which is outdated and inappropriate.

Proponents' Testimony:

Bob Anderson, Administrator, Special Services Division, Department of Corrections and Human Services, supported HB 65 as amended by the House. The bill is a basic clean-up of the statutes currently dealing with commitments of the developmentally disabled to institutional programs. It would clarify the language, getting rid of a lot of duplications. The current law had a sunset provision that would take effect July 1. It would change the definition of developmentally disabled

reverting back to a prior-1991 definition which is totally outdated. He claimed that they needed the definition as it was. The definition of developmentally disabled people pertains to those who are committable to an institution. The definition deals with people who need total or near-total care or have major behaviors that cannot be safely or effectively served in community programs. He encouraged support of the bill as amended.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HOLDEN questioned **Bob Anderson** about the fiscal note change. **Mr. Anderson** said there was no fiscal impact whatsoever. The prior note dealt with the Eastmont issue which was amended out. The Senator asked for an updated fiscal note to take to the Senate floor. **SENATOR HALLIGAN** asked about the definition of licensed, professional psychiatrist on Page 3, Line 4. Did they intend that a masters' degree would be required in the daily work in the upper level mid-management. Was the definition accepted by the DD community? **Cary Lund, SRS,** stated they had representatives of providers participating in the Governors' Task Force. The definition, "developmental disabilities professional," will only apply in the commitment process, and would not affect the community service system. He said they had reconfigured what the professional is about. The role tightened in 1991 in the changes in the commitment law because there were very inappropriate commitments coming out of some district courts in the hinterlands of the state. They were using just GP's to make the professional judgements. In this bill, the name would be changed to a more appropriate title without adding too much more criteria than there is now. There was a limited pool currently and this would not limit it much more, he said. **SENATOR HALLIGAN** asked how this bill would change the law with respect to a re-commitment back to an institution. **Mr. Lund** said the standard for commitment was not changed in the bill. **SENATOR HALLIGAN** asked what the standard was for involuntary commitment relating to re-commitment. **Mr. Lund** stated that the definition was seriously developmentally disabled as stated on Page 5. The person has to be found to have developmental disability and is impaired in terms of cognitive functioning. The old definition did not address cognitive functioning. He read item (c), "has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care, and who, because of those behaviors or deficits, cannot be safely and effectively habilitated at community-based services." He said the professional person has to make a judgement and they go to the county attorney who files a petition. A screening team, housed at SRS, including consumers and personnel from SRS, looks at the person in terms of the definition before the court can consider the person for

commitment. By bringing the process into the committee, they can identify resources within the community and the group would be able to do a threshold screen to place the person in the appropriate place. **SENATOR HALLIGAN** said their board in Missoula was concerned about procedural rights of any of the consumers without the cognitive functions if they do not have a family member or guardian to represent their best interests. **Mr. Lund** replied that most people were responsible for their own well-being and few are in guardianship. Most can consent for themselves. The Missoula corporation participates in the IP (individual planning) team which can work with the county attorney or the Montana Advocacy Program and look for an advocate or guardian if there is a serious question of ability to consent. The judge would make the determination too, about the commitment law. It was intended to provide balance behind the committed person. **SENATOR HALLIGAN** said he did not have a problem with it. He stated that they had the very severely disabled in their residential care and it has been a concern that the individual might consent to a waiver of rights. He did not think they could do that. He was unaware of the layers of protection and support to make sure that they are in the best setting possible. **Mr. Lund** said there was a set of rights encompassed in the law. **SENATOR LARRY BAER** asked **Mr. Anderson** about the fiscal note item of $1.3 million in the budget for the biennium. He asked if the amendments negated that figure? **Mr. Anderson** said the bill initially included a proposal to close Eastmont effective January 1, 1997. The fiscal note contains all the information regarding that issue. That part of the bill had been amended out and they were no longer recommending the closure, so the fiscal impact would be zero. It would only apply with the closure of Eastmont.

Closing by Sponsor:

REPRESENTATIVE McKEE reaffirmed that the fiscal note had been eliminated with the Eastmont amendment. There will be no fiscal impact with the bill. It would only enhance the current commitment statute for the seriously developmentally disabled and eliminates the current sunset provisions in the law. She said **SENATOR HOLDEN** had agreed to carry the bill onto the Senate floor if it should be approved.

SENATOR AL BISHOP ASSUMED THE CHAIR.

HEARING ON HB 186

Opening Statement by Sponsor:

REPRESENTATIVE BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 186. She asked the committee to also be cognizant of HB 366 which implements the things that are presented in HB 186 in the adult protection side of the statutes. This bill would clean up and bring the statutes for child protection up to date. She directed their attention to the amendments on Pages 11 and 12 which are the substantial amendments in the bill. They

Discussion: It was determined that **SENATOR BAER** and **Valencia Lane** would work on the amendments for presentation the following day.

EXECUTIVE ACTION ON HB 256 and HB 345

Discussion: **CHAIRMAN CRIPPEN** said the DUI bills needed to be coordinated to SB 316 and SB 33. In speaking with **CHAIRMAN CLARK** of the House Judiciary Committee, they had agreed to each send three members to a Sub-committee along with **Valencia Lane** to resolve the conflicts, if possible. The chairman named **SENATOR BISHOP, SENATOR HALLIGAN AND SENATOR JABS** to the committee. **SENATOR HALLIGAN** asked for the sentiment of the committee on requiring that the surcharge from the DUI fines go to the Jaws of Life equipment only, even for communities that have already purchased them? In the past, the money had gone to DUI Task Forces. He did not see a need for them to mandate where the money should go, but if there was no opposition, he would not propose it. **SENATOR HOLDEN** said it was a good point. **CHAIRMAN CRIPPEN** said the House group might have a different opinion. He would rely on the decision of the committee, he said. He hoped for an early resolution from the Sub-committee.

{Tape: 2; Side: A; Approx. Counter: 00}

EXECUTIVE ACTION ON HB 65

Motion/Vote: **SENATOR HOLDEN MOVED THAT HB 65 BE CONCURRED IN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR HOLDEN** was assigned the bill to carry to the Senate floor.

EXECUTIVE ACTION ON HB 186 and HB 366

Discussion: **SENATOR HALLIGAN** said the only suggested amendments were on Page 7 of HB 366. He and **Ms. Lane** would work on amendments to provide a way for requestors of information to put that request in writing or appearing in person. He thought it could be written in the (iii) Section of Page 7. In HB 186, the sponsor had agreed to an amendment to the, "take out or substantiated by," language. It was agreed to work on these bills the following day.

EXECUTIVE ACTION ON HB 322

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 322 ON PAGE 1, LINE 19, AS SHOWN IN (EXHIBIT 2 - #3).**

Discussion: **CHAIRMAN CRIPPEN** asked what would constitute, "not in compliance with state liquor laws?" **Valencia Lane** said underage drinking would be considered on instance, or a false ID.

SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 65 (third reading copy -- blue), respectfully report that HB 65 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Holden
Senator Carrying Bill

601212SC.SRF

DATE 3-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB55, HB65, HB366, HB186, HB322

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Mary Ann Wellbank	SRS-CSED	HB55		
Robert T Anderson	DCHS	HB65	L	
Andrée Larose	Montana Advocacy Program	HB65	✓	
Kate Cholewa	MT Women's Lobby	HB55	X	
Greg Bryan	MIKA	HB322	X	
Stuart Doggett	MIKA	HB322	X	
Dick Van Hoecke	SRS-DDD	HB366	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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